

Towards a comprehensive dispute settlement system in a China-EU bilateral investment treaty

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Valorisation Addendum

1. Social Relevance

In order to predict the form the dispute settlement system in a China-EU BIT would take, this thesis examines the legal cultures of China and that of the EU, which play a vital role in their respective dispute settlement practices. By examining the effect of the legal traditions and contemporary legal ideologies of China and the EU on the current dispute settlement systems in their legal systems, and by explaining how those systems are culturally imbedded and socially constructed, this thesis helps society understand and recognize the inter-relationship between legal culture and a country's practice in dispute settlement. Since legal cultural characteristics are closely tied to the legal system they exist in and are deeply rooted within their communities, the legal cultural analysis of the approaches of China and the EU to dispute settlement helps investors from one side to run their investment in the other side's territory. At the same time, legal culture undoubtedly also reflects relevant features of individuals in the society, so the research result of this thesis enriches the capacity to understand the underlying reasons for particular behaviours in dispute settlement of individuals from China and the EU.

2 Target Groups

The target groups of this thesis include legal academics, scholars and students from different legal specializations, particularly in international investment law, international trade law and dispute settlement. This thesis may also be interesting to audiences outside the academic community. First, since this thesis addresses the design of the dispute settlement system in the prospective China-EU BIT, policy makers, government officials, public policy experts and political scientists that are involved with foreign affairs, trade, commerce and investment departments would be interested in it. Second, legal practitioners, like lawyers, who want to understand the dispute settlement systems in China and in the EU, especially for foreign investment related issues, may also find some useful discussions in this thesis. Third, considering one of the innovative features of this thesis——analyzing dispute settlement from a legal cultural perspective, this thesis is of interest to people who work in the fields of law and social science. Last but not least, the general public can also find this thesis useful in order to gain an understanding of the legal systems and general legal culture of China and the EU.

3. Activities/Products

The concrete products of this thesis include a presentation of the approaches taken by China and by the EU in internal and international investment dispute settlement. It also examines the legal culture in China and that in the EU regarding dispute settlement in general.

Topics related to this thesis have been presented in several conferences. The following are some of the presentations:

- “The Investor-State Dispute Settlement System in a China-EU Comprehensive Agreement on Investment: Setting a Sample of Integration”, presented at the International Conference of “Multilateral Reform of Investor-State Dispute Resolution: A Dialogue among Different Approaches” in September 2019 in Xi’an, China
- “The EU’s Proposal for Investor-State Dispute Settlement: Adding ‘EU-elements’ to the International Rule of Law”, presented at the 23rd Ius Commune Annual Conference in November 2018 in Amsterdam, the Netherlands
- “Resolving Foreign Direct Investment-Related Disputes in China’s Legal System: What to Expect and How to Understand?”, published in Vesna Lazić & Steven Stuij (eds.), *International Dispute Resolution—Selected Issues in International Litigation and Arbitration*, Springer/Asser Press (2018), 109-127
- “Alternative Dispute Resolution for Investor-State Dispute Settlement Mechanism in a China-EU Bilateral Investment Treaty”, presented at the 7th Conference of the Postgraduate and Early Professionals/Academics Network of the Society of International Economic Law (PEPA/SIEL) in April 2018 in Nicosia, Cyprus
- “Investor-State Mediation in a China-EU Bilateral Investment Treaty: Talking About Being in the Right Place at the Right Time”, published in *Chinese Journal of International Law (SSCI)*, 2018(17), 111-135
- “Promoting Mediation to Restore Trust in Investor-State Dispute Settlement”, presented at the 22nd Ius Commune Annual Conference in November 2017 in Utrecht, the Netherlands
- “China’s Approach to Trade and Investment Dispute Resolution: from Domestic Mechanisms to International Platforms”, presented at the 2nd Annual PhD Colloquium of International Economic Law in January 2017 in Brussels, Belgium
- “Tribunals’ Discretion in Realizing Transparency in Investment Arbitration”, presented at the Max Planck Institute Luxembourg Guest Forum in February 2017 in Luxembourg, Luxembourg
- “Jurisdiction Ratione Temporis in Successive International Investment Agreements—What Can China and Chinese Investors Learn from the Ping An Case?”, published in *China and WTO Review*, 2017(3), 61-90

- “Tribunals’ Discretion in Realizing Transparency in Investment Arbitration”, presented at the 21st Ius Commune Annual Conference in November 2016 in Maastricht, the Netherlands
- “The Dispute Settlement Mechanisms in a China-EU Free Trade and Investment Agreement”, at the 1st Annual PhD Colloquium of Young Researchers on A New Architecture for International Economic Law in April 2016 in Antwerp, Belgium

4. Innovativeness

This thesis is innovative in at least two respects:

First, this thesis conducts a legal cultural analysis by focusing on the manner in which the legal culture of China and that of the EU has shaped their performance in resolving investment disputes. Such an analysis is instructive in terms of predicting how it would affect the current negotiations on a China-EU BIT. In existing literature, legal cultural analysis is used more often when one legal system is being examined. The legal cultural analysis in this thesis takes into account the practice on dispute settlement by China and by the EU respectively at both internal and international levels. Specifically, it identifies both parties’ legal cultural characteristics in dispute settlement as influenced by their legal traditions at the first step. It then assesses the DSMs in the internal legal systems from a legal cultural perspective. In this regard, internal dispute settlement systems can be taken as formally reflecting and confirming legal cultural characteristics. In other words, certain arrangements in DSMs reflect and help to maintain the deeply held normative values of the society. Third, a legal cultural analysis is also conducted of the performance of both parties in international investment dispute settlement.

Second, this thesis adopts and applies a systemic analysis in two aspects. First, dispute resolution is discussed by combining the practice of a state in international trade and investment in the system of international economic law. In other words, in order to understand a state’s practice in the past and forecast its attitude to international investment dispute settlement in the future, a related area, international trade dispute resolution, which is another constituent of the field of international economic law, is examined for inspiration, especially for the analysis of state-state investment dispute settlement. Second, various DSMs are viewed as a whole constituting a comprehensive dispute settlement system. Different DSMs, such as negotiation, mediation, consultations, and adjudication, are normally considered and examined separately. However, a systemic view is necessary for designing a coherent and comprehensive dispute settlement system composed of various DSMs. Such a systemic approach has the potential to improve the functioning of investment dispute settlement. However, this approach seems to have been unfortunately overlooked in literature and treaty practice.

5. Schedule & Implementation

Valorisation can be achieved in the following ways. Firstly, the author will continue doing research on this topic. This thesis contributes to research regarding the possible design of the dispute settlement system in the prospective China-EU BIT based on their legal cultural characteristics and practice in dispute settlement. However, more research remains to be carried out. For example, whether and if so, how an entity's approach to resolving disputes in other relevant areas, such as international maritime law, affects the entity's performance in international economic law. The author aims to obtain an academic position in relation to international dispute resolution in a Chinese university, where there is good access to latest news and publications to facilitate the future research. At the same time, cooperation with the supervisors and other researchers will continue. Secondly, the author will seek opportunities to participate and present on the topics derived from this thesis at events that aim to communicate the up-to-date issues regarding international dispute settlement. Thirdly, some topics that are touched upon in this thesis will be further developed with the aim to publish in journals. For instance, the combination of and interaction between state-state and investor-state dispute settlement system. Fourthly, this thesis is planned to be further improved and published in a book in order to reach a wider audience.